

THE SOCIAL WELFARE ACT (EXCERPT)
Act 280 of 1939

400.106 Medically indigent individual; definitions; notice of legal action; requirements; violation; civil fine; recovery of expenses by the department or contracted health plan; priority against proceeds; release of claims; subrogation of interests.

Sec. 106.

(1) As used in this act, "medically indigent individual" means any of the following:

(a) An individual receiving family independence program benefits or an individual receiving supplemental security income under title XVI or state supplementation under title XVI subject to limitations imposed by the director according to title XIX.

(b) Except as provided in sections 106a and 106b, an individual who meets all of the following conditions:

(i) The individual has applied in the manner the department prescribes.

(ii) The individual's need for the type of medical assistance available under this act for which the individual applied has been professionally established and payment for it is not available through the legal obligation of a public or private contractor to pay or provide for the care without regard to the income or resources of the patient. The department is subrogated to any right of recovery that a patient may have for the cost of hospitalization, pharmaceutical services, physician services, nursing services, and other medical services not to exceed the amount of money expended by the department for the care and treatment of the patient. The patient or other person acting on the patient's behalf shall execute and deliver an assignment of claim or other authorizations as necessary to secure the right of recovery to the department. A payment may be withheld under this act for medical assistance for an injury or disability for which the individual is entitled to medical care or reimbursement for the cost of medical care under chapter 31 of the insurance code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under another policy of insurance providing medical or hospital benefits, or both, for the individual unless the individual's entitlement to that medical care or reimbursement is at issue. If a payment is made, the department, to enforce its subrogation right, may do either of the following:

(a) intervene or join in an action or proceeding brought by the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors, against the third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual;

(b) institute and prosecute a legal proceeding against a third person who may be liable for the injury, disease, or disability, or against contractors, public or private, who may be liable to pay or provide medical care and services rendered to an injured, diseased, or disabled individual, in state or federal court, either alone or in conjunction with the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. The department may institute the proceedings in its own name or in the name of the injured, diseased, or disabled individual, the individual's guardian, personal representative, estate, dependents, or survivors. As provided in section 6023 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6023, the department, in enforcing its subrogation right, shall not satisfy a judgment against the third person's property that is exempt from levy and sale. The injured, diseased, or disabled individual may proceed in the injured, diseased, or disabled individual's own name, collecting the costs without the necessity of joining the department or the state as a named party. The injured, diseased, or disabled individual shall notify the department of the action or proceeding entered into upon commencement of the action or proceeding. An action taken by the state or the department in connection with the right of recovery afforded by this section does not deny the injured, diseased, or disabled individual any part of the recovery beyond the costs expended on the individual's behalf by the department. The costs of legal action initiated by the state must be paid by the state. A payment must not be made under this act for medical assistance for an injury, disease, or disability for which the individual is entitled to medical care or the cost of medical care under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941; except that payment may be made if an appropriate application for medical care or the cost of the medical care has been made under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, entitlement has not been finally determined, and an arrangement satisfactory to the department has been made for reimbursement if the claim under the worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is finally sustained.

(iii) The individual has an annual income that is below, or subject to limitations imposed by the director and because of medical expenses falls below, the protected basic maintenance level. The protected basic maintenance level for 1-person and 2-person families must be not less than 100% of the payment standards generally used to determine eligibility in the family independence program. For families of 3 or more persons, the protected basic maintenance level must be not less than 100% of the payment standard generally used to determine eligibility in the family independence program. These levels must recognize regional variations and must not exceed 133-1/3% of

the payment standard generally used to determine eligibility in the family independence program.

(iv) The individual, if a family independence program related individual and living alone, has liquid or marketable assets of not more than \$2,000.00 in value, or, if a 2-person family, the family has liquid or marketable assets of not more than \$3,000.00 in value. The department shall establish comparable liquid or marketable asset amounts for larger family groups. Excluded in making the determination of the value of liquid or marketable assets are the values of: the homestead; clothing; household effects; \$1,000.00 of cash surrender value of life insurance, except that if the health of the insured makes continuance of the insurance desirable, the entire cash surrender value of life insurance is excluded from consideration, up to the maximum provided or allowed by federal regulations and in accordance with department rules; the fair market value of tangible personal property used in earning income; an amount paid as judgment or settlement for damages suffered as a result of exposure to Agent Orange as defined in section 5701 of the public health code, 1978 PA 368, MCL 333.5701; and a space or plot purchased for the purposes of burial for the person. For individuals related to the title XVI program, the appropriate resource levels and property exemptions specified in title XVI must be used.

(v) Except as provided in section 106b, the individual is not an inmate of a public institution except as a patient in a medical institution.

(vi) The individual meets the eligibility standards for supplemental security income under title XVI or for state supplementation under the act, subject to limitations imposed by the director of the department according to title XIX; or meets the eligibility standards for family independence program benefits; or meets the eligibility standards for optional eligibility groups under title XIX, subject to limitations imposed by the director of the department according to title XIX.

(c) An individual who is eligible under section 1396a(a)(10)(A)(i)(VIII) of title XIX, also known as the Healthy Michigan plan.

(2) As used in this act:

(a) "Contracted health plan" means a managed care organization with whom the department contracts to provide or arrange for the delivery of comprehensive health care services as authorized under this act.

(b) "Federal poverty guidelines" means the poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line under section 673(2) of subtitle B of title VI of the omnibus budget reconciliation act of 1981, 42 USC 9902.

(c) "Medical institution" means a state licensed or approved hospital, nursing home, medical care facility, psychiatric hospital, or other facility or identifiable unit of a listed institution certified as meeting established standards for a nursing home or hospital in accordance with the laws of this state.

(d) "Title XVI" means title XVI of the social security act, 42 USC 1381 to 1383f.

(3) An individual receiving medical assistance under this act, the individual's representative, or the individual's legal counsel, or all 3, shall notify the department and, if the individual is enrolled in a contracted health plan, the contracted health plan if either of the following occurs:

(a) The individual, the individual's representative, or the individual's legal counsel, or all 3, file a complaint in which the department or the contracted health plan may have a right to recover expenses paid under this act.

(b) The individual, the individual's representative, or the individual's legal counsel, or all 3, seek to settle an action, without filing a complaint, in which the department or the contracted health plan may have a right to recover expenses paid under this act.

(4) The notice required under subsection (3)(a), along with a copy of the complaint and all documents filed with the complaint, must be provided to the department and, if applicable, the contracted health plan within 30 days after the complaint is filed with the court. The individual, the individual's representative, or the individual's legal counsel shall certify that notice and a copy of the complaint have been provided to the department and, if applicable, the contracted health plan on the summons and complaint form. This certification must be made in cases with the following case type codes: NF (no-fault automobile insurance), NH (medical malpractice), NI (personal injury, auto negligence), NO (other personal injury), and NP (product liability), and in any other case in which the department or the contracted health plan may have a right to recover expenses paid under this act. The state court administrator shall revise the summons and complaint form to allow certification under this subsection.

(5) The notice required under subsection (3)(b) must be provided in writing to the department and, if applicable, the contracted health plan before the action is settled and must include the proposed settlement terms, including the settlement amount, attorney costs, attorney fees, and Medicaid health plan or Medicare subrogation interest amounts, if applicable.

(6) If notice is not given as required by subsections (3) to (5), the department or the contracted health plan may file a legal action against the individual, the individual's representative, or the individual's legal counsel, or all 3, to recover expenses paid under this act. The attorney general or the contracted health plan shall recover any cost or attorney fees associated with a recovery under this subsection.

(7) An attorney who knowingly fails to timely notify the department or the contracted health plan as required by this section is subject, at the discretion of the department, to a \$1,000.00 civil fine for each violation. The civil fine is payable to the department and must be deposited in the general fund. The money deposited in the general fund under this subsection may be used to offset the cost to this state for operating the Medicaid program.

(8) The department has first priority against the proceeds of the net recovery from the settlement or judgment in an action settled in which notice has been provided under subsection (3). A contracted health plan has priority immediately after the department in an action settled in which notice has been provided under subsection (3). The department and a contracted health plan shall recover the full cost of expenses paid under this act unless the department or the contracted health plan agrees to accept an amount less than the full amount. If the individual would recover less against the proceeds of the net recovery than the expenses paid under this act, the department or the contracted health plan, and the individual shall share equally in the proceeds of the net recovery. The department or a contracted health plan is not required to pay an attorney fee on the net recovery. As used in this subsection, "net recovery" means the total settlement or judgment less the costs and fees incurred by or on behalf of the individual who obtains the settlement or judgment.

(9) The individual, the individual's representative, or the individual's legal counsel shall not release the claims of the department or the contracted health plan against third parties or insurers without the consent of the department or the contracted health plan.

(10) All of the following apply with respect to the subrogation interest of the department or the contracted health plan, or both:

(a) Within 30 days of receiving the notice required under this act, the department and, if applicable, a contracted health plan shall provide to the individual, the individual's representative, or the individual's legal counsel, a written itemization of expenses paid under this act for which the third party may be liable.

(b) If the department or a contracted health plan fails to provide the notice required by subdivision (a), the obligation of the individual, the individual's representative, or the individual's legal counsel, or all 3, to protect the subrogation interest of the department or the contracted health plan, or both if both failed to provide notice, is discharged. The department or the contracted health plan retains the right to pursue recovery through its own means.

(c) A reported subrogation amount is valid unless supplemented by the department or a contracted health plan.

(d) An individual, the individual's representative, or the individual's legal counsel, or all 3, satisfy the obligation to protect the subrogation interest of the department or a contracted health plan if a settlement agreement provides for reimbursement of the total amount of expenses in the last received written itemization from the department or the contracted health plan, reduced by any applicable fees and costs for which a reduction is allowed under statute or administrative rule.

History: Add. 1966, Act 321, Eff. Oct. 1, 1966 ;-- Am. 1967, Act 289, Imd. Eff. Aug. 1, 1967 ;-- Am. 1970, Act 160, Imd. Eff. Aug. 2, 1970 ;-- Am. 1973, Act 189, Imd. Eff. Jan. 8, 1974 ;-- Am. 1976, Act 284, Imd. Eff. Oct. 20, 1976 ;-- Am. 1978, Act 623, Imd. Eff. Jan. 6, 1979 ;-- Am. 1982, Act 405, Eff. Mar. 30, 1983 ;-- Am. 1990, Act 145, Imd. Eff. June 27, 1990 ;-- Am. 2003, Act 33, Imd. Eff. July 2, 2003 ;-- Am. 2004, Act 409, Imd. Eff. Nov. 29, 2004 ;-- Am. 2006, Act 144, Imd. Eff. May 22, 2006 ;-- Am. 2013, Act 107, Eff. Mar. 14, 2014 ;-- Am. 2014, Act 452, Imd. Eff. Jan. 2, 2015 ;-- Am. 2018, Act 511, Imd. Eff. Dec. 28, 2018 ;-- Am. 2023, Act 98, Imd. Eff. July 19, 2023

Compiler's Notes: For transfer of powers and duties of the home help program and the physical disabilities program from the family independence agency to the director of the department of community health, see E.R.O. No. 1997-5, compiled at MCL 400.224 of the Michigan Compiled Laws. Enacting section 1 of Act 107 of 2013 provides: "Enacting section 1. This amendatory act does not do either of the following: (a) Authorize the establishment or operation of a state-created American health benefit exchange in this state related to the patient protection and affordable care act, Public Law 111-148, as amended by the federal health care and education reconciliation act of 2010, Public Law 111-152." (b) Convey any additional statutory, administrative, rule-making, or other power to this state or an agency of this state that did not exist before the effective date of the amendatory act that added section 105d to the social welfare act, 1939 PA 280, MCL 400.105d, that would authorize, establish, or operate a state-created American health benefit exchange."

Popular Name: Act 280